

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

&

THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

LA.App..No. 1509 of 2005()

LAR.29/1995 of SUB COURT, PATHANAMTHITTA
.....

APPELLANT: 1st CLAIMANT

T.N.MURALEEDHARAN NAIR,
PADMAVILASAM,
ENATTU, PATHANAMTHITTA DIST.

BY ADV. SRI.P.R.RAMACHANDRA MENON

RESPONDENTS:RESPONDENT & PARTIES SHOWN AS CLAIMANTS 2 TO 4

1. STATE OF KERALA,
REP. BY THE DISTRICT COLLECTOR,
PATHANAMTHITTA.
2. THE DISTRICT MANAGER,
KFC, PATHANAMTHITTA.
3. THE MANAGER, STATE BANK OF TRAVANCORE,
ENATTU, PATHANAMTHITTA DIST.
4. THE GENERAL MANAGER,
DISTRICT INDUSTRIES CENTRE,
KOZHENCHERRY, PATHANAMTHITTA DISTRICT.

R1 BY GOVERNMENT PLEADER SMT. LATHA THANKAPPAN.

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD
ON 15/11/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

L.A.A. 1509 OF 2005

Dated: November 15, 2007

JUDGMENT

Harun-UI-Rashid, J.

This appeal is filed against the judgment and decree dated 28.2.2005 in LAR 29/1995 on the file of the Sub Court, Pathanamthitta.

2. The extent of land acquired in this case is 5.85 Ares of dry land and 5 M² of wet land with structures in Enathu village. The acquisition is for the purpose of construction of bridge across Kallada river and its approach road. The date of publication of sec.4(1) notification was 29.12.1992. The land acquisition officer awarded Rs.7414/- per Are for dry land and Rs.1277/-per Are for the wet land.

3. The claimant contended before the reference court that the acquired land is situated on the western side of MC Road and in the heart of Enathu town. The claimant submitted that the acquired land is surrounded by several public and private institutions, temples and churches. According to him, consequent to the acquisition the property is divided into two and the unacquired portion has become useless. It is claimed that the market value of the acquired land is Rs.1,25,000/- per Are.

4. The reference court by judgment and decree dated 30.9.1997 originally disposed of the reference fixing the enhanced land value at Rs.54,336/- per Are for the dry land and Rs.3663/- per Are for the wet

land. For the structures, equipments, machineries etc. the reference court awarded Rs.8,28,547/- as additional compensation. In addition to the aforesaid amounts, Rs.70,500/- was also awarded as shifting charges plus statutory benefits.

5. Aggrieved by the re-determination of the land value, the State preferred LAA 1299/1998 against the judgment and decree passed by the reference court. In the judgment in LAA 1299/98 the only question considered was regarding the adequacy of land value. The compensation fixed for other items viz. value of structures, equipments, machineries, shifting charges etc. was not examined in the said appeal and therefore this court had no occasion to go into the reasonableness or adequacy of the value fixed by the reference court. After considering the materials on record, this court took the view that the matter requires fresh consideration. This court remanded the case for fresh consideration after permitting both the claimant and the State to adduce additional evidence regarding the fixation of land value as on the date of sec.4(1) notification. This court in paragraph 3 directed the reference court to examine the matter with reference to Exts.A1, A2 etc. for the fixation of land value. After remand the court below re-determined the value fixed for the structures, equipments, machineries, shifting charges etc. which was not the subject matter of LAA 1299/1998. The court below was not justified in re-determining the compensation under these heads since the compensation determined by the reference court in the judgment dated

30.9.1997 has become final. Therefore, we set aside the findings of the court below in the matter of re-fixation of compensation for the value of structures, equipments, machineries, shifting charges etc. and we restore the value fixed for the said items in the judgment dated 30.9.1997.

6. The court below by the impugned judgment and decree re-fixed the land value at the rate of Rs.11121/- per Are for the dry land and Rs.1915/- for the wet land.

7. We have noticed the location of the acquired land which is lying on the western side just 250 metres north from Enathu junction. The acquired land including the unacquired portion is lying by the side of the MC Road. It is no doubt that the property is lying in an important locality in Enathu town. In the earlier judgment this court directed the court below to re-fix the land value taking into account Exts.A1 and A2 as well. It is seen that by the impugned judgment these documents are not examined nor relied on for the fixation of the land value.

8. The appellant/claimant has a further grievance that the acquired land including the unacquired portion is facing MC Road and therefore the reasons stated that the acquired land is having no road access and therefore it fetches a low land value is not proper. There is force in this contention. The acquired land is also valuable since it is a portion of the larger property facing MC Road. According to the appellant/claimant considering the location and importance of the property and its potential nature, he is entitled to get compensation atleast at the rate fixed by the

reference court in its judgment dated 30.9.1997. Considering the utility of the property, its potentiality and its nearness to Enathu town, we are of the view that the land value fixed by the court below is not fair and reasonable. The court below shall consider all the aspects referred above, Exts.A1 and A2 documents and other features before entering into a decision as to the market value of the property. This is a case where additional market value was fixed by the court below at the rate of Rs.54336/- per Are for the dry land and Rs.3663/- per Are for the wet land. Hence the matter requires re-determination after evaluating all the materials on record.

In the result, the judgment and decree under appeal are set aside and the matter is remanded for fresh consideration to re-fix the market value of the property. The decision shall be taken within a period of six months from the date of receipt of a copy of this judgment. The appellant is entitled to refund of the full amount of court fee. There will be no order as to costs.

**KURIAN JOSEPH
JUDGE**

**HARUN-UL-RASHID
JUDGE.**

mt/-